

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4467, Jan. 30, 1997, unless otherwise noted.

Subpart 1834.0—General

1834.003 Responsibilities. (NASA supplements paragraph (a))

(a) NASA's implementation of OMB Circular No. A-109, Major Systems Acquisitions, and FAR part 34 is contained in this part and in NASA Policy Directive (NPD) 7120.4, "Program/Project Management," and NASA Procedures and Guidance (NPG) 7120.5, "Program/Project Management Guide".

Subpart 1834.70—Acquisition of Major Systems

1834.7001 Definitions.

(a) Down-selection. In a phased acquisition, the process of selecting contractors for phases subsequent to the initial phase from among the preceding phase contractors.

(b) Major system. For NASA, "major system" is a program fitting the criteria of FAR 34.003(c) in lieu of the definition provided in FAR 2.101.

(c) Phased acquisition. A program comprised of several distinct steps or phases where the realization of program objectives requires a planned, sequential acquisition of each step or

phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(d) Progressive competition. A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of this program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1834.7002 Phased acquisitions.

(a) In acquisitions subject to the provisions of OMB Circular No. A-109 and NPD 7120.4 and NPG 7120.5, or other similar phased acquisitions, it is NASA policy to ensure competition in the selection of contractors for award in each phase of the process not performed in-house.

(b) There are five phases in the life cycle of a NASA major system acquisition:

(1) Phase A, Preliminary Analysis, involves the analysis of alternate overall project concepts for accomplishing a proposed agency technical objective or mission.

(2) Phase 3, Definition, involves the detailed study, comparative analysis, and preliminary system design of selected Phase A concepts.

(3) Phase C, Design, involves the detailed system design (with mock-ups and test articles of critical systems and subsystems) of the systems design concept determined to provide the best overall system for the Government.

(4) Phase D, Development, involves final detailed design, fabrication, delivery of an operational system that meets program requirements.

(5) Phase E, Operations, involves operation and use of the system in its intended environment, continuing until the system leaves the agency inventory. This phase includes any system modifications and upgrades.

(c) The preferred approach in NASA for the acquisition of the phases of a Major System is the following:

(1) Phase A is accomplished primarily through in-house studies.

(2) Phases B, C, and D are acquired through a phased acquisition process in which two or more Phase B contracts are awarded competitively and then a down-selection is made among these contractors to determine the single combined Phase C/D awardee.

(3) Phase E is normally acquired separately.

(d) Each phase of a major system acquisition not performed in-house must be synopsisized in accordance with FAR 5.201 and must include all the information required by FAR 5.207.

(e) Whether or not down-selection procedures are used, contracts awarded in phased acquisitions shall not include requirements for submission of subsequent phase proposals. Instead, proposals shall be requested through a solicitation or other appropriate mechanism (e.g., by letter when using the progressive competition technique). Priced options for preparation of subsequent phase proposals are prohibited.

(f) Time gaps between phases should be minimized in all major system phased acquisitions. Accordingly, early synopsis of subsequent phase competition is encouraged. Also, when sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. When appropriate, these activities should commence as early as practicable during the period of performance of a phase to ensure the expeditious award of the succeeding phase.

1834.7003 Down-selections in phased acquisitions.

1834.7003-1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the Phase B solicitation will also lead to Phase C/D award, the decision to use a down-selection strategy must be made prior to initiation of the Phase B acquisition. Accordingly, both phases

must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or ASM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in the subsequent phase, down-selection is inappropriate. In this case, the major system acquisition phases should be contracted for separately without a down-selection between phases.

(c) With one exception, both the initial and subsequent phase(s) of a major system acquisition down-selection process are considered to be full and open competition if the procedures in 1834.7003-4 and 1834.7003-5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205, when appropriate.

1834.7003-2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that one of the Phase B contractors will also be the Phase C/D contractor, the Phase B offerors must clearly demonstrate the ability to perform the subsequent phases. The evaluation factors for Phase B award must specifically include the evaluation of the Phase B offerors' abilities to perform Phase C/D as well as Phase B.

1834.7003-3 Down-selection milestones.

The Phase B contracts should be structured to allow for down-selection at a discrete performance milestone such as a significant design review or at contract completion. This will avoid time gaps between phases and eliminate unnecessary duplication of effort and the need to terminate the remaining Phase B efforts of an unsuccessful

Phase C/D offeror. However, the appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if the acquisition strategy calls for formal completion of Phase B effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for Phase C/D award and performance to carry all Phase B contractors through PDR, the Phase B contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and Phase C/D performance begun at the completion of the PDR option. Any down-selection milestone must ensure that sufficient design maturity exists to allow for an informed selection decision leading to a successful completion of Phase C/D.

1834.7003-4 Synopsis.

(a) When the phased acquisition process identified in 1834.7002(c)(2) is used, the synopsis for the initial competitive phase, normally Phase B, should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved).

(2) Subsequent competitions for identified follow-on phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be automatically requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a "progressive competition" (see 1834.7003-5), and the mechanism for providing perti-

nent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsized.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered by the agency. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phases, normally a combined C/D, must identify the current phase contractors.

1834.7003-5 Progressive competition.

(a) To streamline the major system acquisition process, the preferred approach for NASA phased acquisitions is the "progressive competition" down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal

preparation instructions and evaluation factors. In addition, the prospective offerors must be advised of all requirements necessary for demonstration of a design maturity equivalent to that to the preceding phase contractors.

(c) Although a key feature of the progressive competition technique is that a formal solicitation is issued for the initial phase only, a new, formal solicitation may nonetheless be required for subsequent phases. When the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contract is invalidated, a new solicitation shall be issued for the next phase.

(d) Phase C/D proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, applies to this proposal due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the Phase B solicitation.

(5) All required clause changes applicable to new work effective since Phase B contract award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., Phase C/D small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition techniques should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the Phase B contractors, it is also likely that a new, formal solicitation is necessary for Phase C/D and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1834.7004 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.234-70, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique described in 1834.7003-5. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.234-71, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique described in 1834.7003-5. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

1835.003 Policy.

1835.015 Contracts for research with educational institutions and nonprofit organizations.

1835.016 Broad agency announcements.

1835.016-70 NASA Research Announcements.

1835.070 NASA contract clauses and solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4469, Jan. 30, 1997, unless otherwise noted.

1835.003 Policy.

See NPG 5800.1, Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

1835.015 Contracts for research with educational institutions and nonprofit organizations. (NASA supplements paragraph (a))

(a)(1)(iv) The research contract shall include a requirement that the contractor obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator or project leader.